IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MARY VALESTINE MILLER TURNER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 99-504-SLR
	)	
PNC BANK, PFPC DIVISION,	)	
	)	
	)	
Defendant.	)	

Mary V. Miller Turner, Philadelphia, Pennsylvania. Pro se Plaintiff.

Michael P. Kelly, McCarter & English, Wilmington, Delaware. Counsel for Defendant.

MEMORANDUM OPINION

Dated: November 3, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiff Mary V. Miller Turner ("Turner") filed this action on August 29, 1998 against defendant PNC Bank, PFPC Division ("PFPC").[1] (D.I. 4) Turner alleges wrongful termination and retaliation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq ("Title VII"). She claims she was wrongfully terminated in retaliation for filing a Title VII lawsuit against a previous employer, Mellon Bank. She also claims she was wrongfully terminated because of her race. In response to these allegations, PFPC argues that Turner cannot show any evidence in support of her claims "beyond her own subjective feelings and unsupported assumptions and conjecture." Thus, PFPC filed a motion for summary judgment as to both the wrongful termination and retaliation claims on May 23, 2003. (D.I. 63) Thereafter, on August 13, 2003, Turner filed a motion to amend her complaint to include defamation of character and intentional infliction of emotional distress claims. (D.I. 77) Both motions are currently before the court.[2] The court has

[1] PFPC states that Turner incorrectly named PNC Bank as the defendant in her complaint. PFPC explains that PFPC, Inc. was the employer of Turner, and separately is a wholly-owned incorporated subsidiary of The PNC Financial Services Group, Inc. Therefore, PFPC claims that PFPC, Inc. is the appropriate defendant. (D.I. 63, 79)

[2] On June 19, 2003 Turner filed two motions to supplement the record regarding her settlement demand. (D.I. 73, 74) Both

jurisdiction over this action pursuant to 28 U.S.C. § 1331. For the reasons that follow, the court grants PFPC's motion for summary judgment and denies Turner's motion to amend the complaint.

II. BACKGROUND

On August 23, 1996, Turner filled out an employment application with PFPC for an accountant position. Shortly thereafter, PFPC invited Turner for an interview. (D.I. 65, Exh. A at 21, 108 Exh. F) On September 6, 1996, Turner received a letter from PFPC indicating that she was being offered a position in the investment accounting department. (D.I. 65, Exh. A at 110)

On September 16, 1996, Turner reported for her first day of work and attended a general corporate orientation. (D.I. 65, Exh. A at 111) Over the next two days, she was given a more specific orientation in her department regarding the fund that she was assigned to manage. (D.I. 65, Exh. A at 117, 123) After this period of orientation, Turner was directed to her cubicle and left to begin work. (D.I. 65, Exh. A at 125)

On or about September 25, 1996, Turner learned that she was required to attend a training class during her second week of employment. (D.I. 65, Exh. A at 127) Turner reported to that training class the following afternoon. (D.I. 65, Exh. A at 128)

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motions are hereby denied as moot.

Joseph Gorman, Vice President, Director of Accounting Training ("Gorman"), conducted the session. (D.I. 65, Exh. G) Gorman and Turner had never met prior to this occasion. (D.I. 65, Exh. A at 129, Exh. G) During the class, Gorman distributed a sheet of paper to each of the attendees. When he handed the sheet of paper to her, Turner alleges that he said, "You're F'ing." Turner claims that she does not know what Gorman meant by this statement. (D.I. 65, Exh. A at 141) Gorman, however, denies ever making such a statement. (D.I. 65, Exh. G)

The training class lasted for approximately forty minutes. (D.I. 65, Exh. A at 134) At the end of the class, Turner wished to speak with Gorman regarding the cancellation of another class that she had previously registered to attend.[3] (D.I. 65, Exh. A at 135) As she approached him, he was engaged in conversation with another attendee named Terence Carter ("Carter"). (D.I. 65, Exh. A at 134, 135) Turner alleges that she overheard Gorman tell Carter that "she is the one suing everybody." (D.I. 65, Exh. A at 137) Gorman denies making this comment and Carter denies hearing it. Indeed, Turner admits that maybe she misunderstood Gorman's comment. (D.I. 65, Exh. G, Exh. H, Exh. A at 142, 147)

[3] Prior to learning that all employees must attend this mandatory training class, Turner signed up for a class covering international funds. During Gorman's training class it became apparent, however, that the same subject matter would be covered during the mandatory training class.

Despite this, after Gorman and Carter finished speaking, Turner addressed Gorman and asked him not to speak about her affairs with other employees. (D.I. 65, Exh. A at 140) Gorman requested that Turner wait while he located a third person to witness the conversation. At that point, he brought Karen Castagna ("Castagna") into the room. (D.I. 65, Exh. G) Gorman asked Turner to repeat her statement, which she did. (D.I. 65, Exh. A at 140) Gorman again denied the accusation. (D.I. 65, Exh. G) Turner then apologized for any misunderstanding on her part and returned to her cubicle. (D.I. 65, Exh. A at 141, 142)

Following this incident, Gorman immediately documented his account of the event and asked Castagna to do the same, which she did. (D.I. 65, Exh. G, I) Gorman also reported the incident to Michael Kilroy, Vice President, Human Resources Manager ("Kilroy"), that same afternoon. (D.I. 65, Exh. J)

The next day on September 27, 1996, Kilroy conducted an investigation. He met with both Turner and Carter to inquire about the incident. At the conclusions of these meetings, Kilroy decided to terminate Turner effective immediately for making false and dishonest accusations against her employer. Kilroy met with Turner for a second time and informed her of this decision.

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). With particular respect to discrimination cases, the court's role is "'to determine whether, upon reviewing all the facts and inferences to be drawn therefrom in the light most favorable to the plaintiff, there exists sufficient evidence to create a genuine issue of material fact as to whether the employer intentionally discriminated against the

plaintiff.'" Revis v. Slocomb Indus., 814 F. Supp. 1209, 1215 (D. Del. 1993) (quoting Hankins v. Temple Univ., 829 F.2d 437, 440 (3d Cir. 1987)). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, then the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

1. PFPC's Motion for Summary Judgment

A. Race Claims

The anti-discrimination provision of Title VII provides: "It shall be an unlawful employment practice for an employer... to ... discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race...." 42 U.S.C. § 2000e-2(a)(as amended 1991). Claims of discrimination brought pursuant to this provision are analyzed under one of two analysis schemes depending on whether the suit is characterized as a "pretext" suit or a "mixed

motives" suit. A "pretext" suit follows a burden-shifting analysis, whereas in a "mixed-motives" suit, a plaintiff need only show that the unlawful motive was a substantial motivating factor in the adverse employment action. See Shellenberger v. Summit Bank, Inc., 318 F.3d 183, 187 (3d Cir. 2003). Since a review of the record does not reveal any direct evidence of race discrimination and Turner does not appear to make this assertion, the court will analyze Turner's discrimination claim using the burden-shifting framework for "pretext" suits.

Under this analysis scheme, plaintiff must first establish a prima facie case of race discrimination under Title VII. To do so, plaintiff must prove three elements by a preponderance of the evidence: (1) that she is a member of a protected class; (2) that she suffered some form of adverse employment action; and (3) that this action occurred under circumstances that give rise to an inference of unlawful discrimination such as might occur when a similarly-situated person not of the protected class is treated differently. See Boykins v. Lucent Techs., Inc., 78 F. Supp. 2d 402, 409 (E.D. Pa. 2000) (citing Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999)). The Third Circuit recognizes, however, that the elements of a prima facie case may vary depending on the facts and context of a particular situation. See Pivirotto v. Innovative Sys. Inc., 191 F.3d 344, 352 (3d Cir. 1999). Nevertheless, speculation alone cannot

establish a prima facie case of discrimination. See Sonja J. Bray v. L.D. Caulk Dentsply Int'l, 2000 U.S. Dist. Lexis 11062 (D. Del. 2000).

Once a plaintiff establishes a prima facie case, the burden shifts to the defendant "to articulate some legitimate nondiscriminatory reason for the employee's rejection." McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). If the defendant carries this burden, then the presumption of discrimination drops from the case. The plaintiff must at this point "cast sufficient doubt" upon the defendant/employer's proffered reasons to permit a reasonable factfinder to conclude that the reasons are fabricated. Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1072 (3d Cir. 1996) (en banc). A plaintiff may cast this doubt by showing "weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action." Olson v. Gen. Elec. Astrospace, 101 F.3d 947, 951-52 (3d Cir. 1996).

In the instant action, PFPC does not dispute that Turner meets the first two elements of the prima facie case. It denies, however, that Turner has established unlawful discrimination. The court agrees with PFPC on this point. Turner has not presented any evidence from which to infer that PFPC terminated her employment because of her race. Rather, Turner merely

speculates that race was the motivating factor. When specifically asked during her deposition what facts formed the basis of her race discrimination claim, Turner was unable to articulate a single fact.

> Turner: I **felt** as though Mr. Gorman was offended by a black female approaching him on any level and asking him to correct his behavior...Had I been a Caucasian female, I **feel** he would not have asked for my job.
> Counsel: Did Mr. Gorman make any reference to your race [at any time]?
> Turner: No, he did not.
> Counsel: Do you have any other reason to believe that your termination was based on race?
> Turner: That was it.

(D.I. 65 Exh. A at 166, 167)(emphasis added) Short of Turner's unsupported conclusory allegations, the court notes that the record is devoid of concrete evidence to indicate that her termination was motivated in any part by racial animus. Therefore, the court rules that Turner has failed to satisfy the third element of a prima facie case of race-based discrimination.

Even assuming, arguendo, that Turner could establish a prima facie case, the court finds that she has not rebutted the legitimate, nondiscriminatory justification offered by PFPC for terminating her from employment. PFPC told her that she was being terminated for making false and dishonest accusations against Gorman. The court concludes that this ground for termination is legitimate and non-discriminatory. Having carefully reviewed the record, the court finds that Turner does

not offer any evidence to support her allegation that the incident would not have ended in termination if she were not an African American. Accordingly, Turner has failed to cast sufficient doubt upon PFPC's proffered reason for terminating her such that a reasonable trier of fact could find that PFPC discriminated against her. For the above reasons, the court grants PFPC's motion for summary judgment on Turner's race discrimination claim.

B. Retaliation Claim

The anti-retaliation section of Title VII provides:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because [s]he has opposed any practice made an unlawful employment practice by this subchapter, or because [s]he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a)(as amended 1991). Claims of retaliation brought pursuant to this section are analyzed under the same burden-shifting framework described above. In the present case, plaintiff has presented only indirect evidence of retaliation; therefore, the pretext burden-shifting framework applies.

As with a discrimination claim, a plaintiff claiming retaliation must first establish a prima facie case under Title VII. In order to do so, a plaintiff must demonstrate by a preponderance of the evidence that: (1) she engaged in protected activity; (2) the defendant took adverse employment action

against her; and (3) a causal link exists between the protected activity and the adverse action. See Kachmar v. Sungard Data Sys., Inc., 109 F.3d 173, 177 (3d Cir. 1999). "To show the requisite causal link, the plaintiff must present evidence sufficient to raise the inference that her protected activity was the likely reason for the adverse action." Ferguson v. E.I. duPont de Nemours and Co., 520 F.Supp 1172, 1200 (D. Del. 1983).

Once the plaintiff has established a prima facie case, the defendant must state a clear and reasonably specific legitimate, non-discriminatory reason for the adverse employment action. See Olson, 101 F.3d at 951. If the defendant does so, then the presumption of discrimination drops from the case. The burden shifts to the plaintiff to prove that the defendant's proffered reasons are not the "true reasons" for his decision, but are merely a pretext for discrimination. Id.

Here again, PFPC does not dispute that the first two elements are met. PFPC argues that Turner has failed to produce any evidence to establish causation under the third element. The court agrees with PFPC. Turner alleges that PFPC knew of her Title VII lawsuit against her former employer, Mellon Bank, and terminated her for it because PFPC engaged in an ongoing business relationship with Mellon Bank. However, Turner admitted that she is unaware of any employee at PFPC who actually knew of the lawsuit. (D.I. 65 Exh. A at 165) In reviewing the record, the

court does not find any evidence to establish that PFPC or any of its employees knew of Turner's law suit with Mellon Bank. Therefore, a sufficient causal link does not exist between the plaintiff's termination and plaintiff's prior lawsuit. The court grants PFPC's motion for summary judgment as to Turner's retaliation claim.

2. Turner's Motion to Amend the Complaint

"A party may amend the party's pleading once as a matter of course at anytime before a responsive pleading is served.... Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party." Fed. R. Civ. P. 15(a). Though motions to amend are to be liberally granted, a district court "may properly deny leave to amend where the amendment would not withstand a motion to dismiss." Centifanti v. Nix, 865 F.2d 1422, 1431 (3d Cir. 1989). In addition, courts may deny leave to amend where they find "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment" Foman v. Davis, 371 U.S. 178, 182 (1962).

"A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could

be granted under any set of facts consistent with the allegations of the complaint." Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). In other words, claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Where the plaintiff is a pro se litigant, the court has an obligation to construe the complaint liberally. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Gibbs v. Roman, 116 F.3d 83, 86 n.6 (3d Cir. 1997); Urrutia v. Harrisburg County Police Dep't., 91 F.3d 451, 456 (3d Cir. 1996).

Regarding Turner's request for leave to add a defamation claim to her complaint, the elements of defamation are: (1) defamatory communication; (2) publication; (3) the communication refers to the plaintiff; (4) a third party's understanding of the communication's defamatory character; and (5) injury. Bloss v. Kershner, 2000 WL 303342 (Del. Super. Ct. 2000). Here, even construed very liberally, Turner's motion to amend her complaint does not allege facts sufficient to establish any of the first element. Turner does not point to any specific communication that could be deemed a defamatory remark. Instead she merely alleges in her motion that "[d]efendants stated that she acted ...[un]professional." (D.I. 77) After thoroughly reviewing the record, the court finds no such statement by the defendants.

Since Turner will not be able to show the first element required for a prima facie defamation case, the court need not consider the remaining elements. The court concludes that Turner's claims, therefore, would not survive a motion to dismiss. Consequently, the court denies her motion to amend as to her defamation claim.

Turning to consider Turner's intentional infliction of emotional distress claim, a defendant is liable for intentional infliction of emotional distress "where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Mattern v. Hudson, 532 A.2d 85, 86 (Del. Super. 1987). Turner alleges in her motion to amend that "[u]pon disclosure of the documents in the appendix of the Defendant's Motion for Summary Judgment, only then was the Plaintiff able to see the root of this rumor, which barred her from employment." (D.I. 77) The court finds that the appendix attached to PFPC's motion for summary judgment, however, is devoid of such conduct by PFPC. With particular attention directed to the affidavits in the appendix, the court does not believe that PFPC's personnel made any outrageous statements concerning Turner. Consequently, because the court does not find that PFCP committed any extreme or outrageous conduct that went beyond all possible bounds of

decency, the court concludes that Turner's claim of intentional infliction of emotional distress would not survive a motion to dismiss. Accordingly, the court denies Turner's motion to amend the complaint as to her intentional infliction of emotional distress claim.

V. CONCLUSION

For the reasons stated, the court grants PFPC's motion for summary judgment and denies Turner's motion to amend her complaint. An order will issue.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MARY VALESTINE MILLER TURNER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 99-504-SLR
	)	
PNC BANK, PFPC DIVISION,	)	
	)	
	)	
Defendant.	)	

O R D E R

At Wilmington this 3rd day of November, 2003, consistent with the memorandum opinion issued this same date;

IT IS ORDERED that:

1. Defendant's motion for summary judgment (D.I. 63) is granted with respect to plaintiff's race discrimination claim.

2. Defendant's motion for summary judgment (D.I. 63) is granted with respect to plaintiff's retaliation claim.

3. Plaintiff's motion to amend the complaint (D.I. 77) is denied.

4. Plaintiff's motions to supplement the record (D.I. 73, 74) are hereby denied as moot.

5. The Clerk of the Court is directed to enter judgment in favor of defendant and against plaintiff.

Sue L. Robinson
United States District Judge